

AMENDED IN SENATE MAY 7, 2003

SENATE BILL

No. 640

Introduced by Senator Burton

February 21, 2003

An act to add Article 11 (commencing with Section 10286) to Chapter 1 of Part 2 of Division 2 of the Public Contract Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 640, as amended, Burton. Public contracts: expatriate corporations.

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies in overseeing and implementing state contracting procedures and policies.

This bill would, ~~pursuant to legislative findings and declarations,~~ prohibit a state agency from entering into any agreement or contract with a publicly held expatriate corporation, as defined, or its subsidiary. This bill would allow a state department or a state agency to contract with a publicly held expatriate corporation only if ~~the contract is necessary to meet a compelling public interest, as defined, and the state department or agency makes a written finding describing the compelling public interest~~ *certain conditions are met*. This bill would also establish a state-mandated local program by establishing a new ~~crime of perjury~~ *misdemeanor*.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) A number of publicly traded United States based companies
4 are avoiding United States taxation and have diminished their
5 shareholders' rights by reincorporating, in name only, in tax haven
6 countries, including Bermuda and the Cayman Islands.

7 (b) An expatriate company is a United States based company
8 that has moved in name and on paper only to a tax haven country
9 and has no substantial business activities in the country of
10 reincorporation.

11 (c) This practice, also known as "~~corporate-expatriation~~"
12 *expatriation*," is part of a larger pattern of deceptive corporate
13 practices that continues to undermine the faith and confidence of
14 investors in the integrity of the financial markets.

15 (d) The state's investments and pension funds depend on
16 investor faith and confidence in the transparency, fairness, and
17 integrity of the markets.

18 (e) It is, therefore, in the best interests of the state to restore
19 faith in corporate practices and in the nation's financial system. A
20 vital and valid public purpose is served by prohibiting the state
21 from doing business with publicly held expatriate companies.

22 (f) Accordingly, it is the intent of the Legislature that, absent a
23 compelling public interest, the state not enter into any agreement
24 or contract with any publicly held expatriate corporation.

25 SEC. 2. Article 11 (commencing with Section 10286) is
26 added to Chapter 1 of Part 2 of Division 2 of the Public Contract
27 Code, to read:
28

Article 11. California Taxpayer and Shareholder Protection
Act of 2003

10286. This article shall be known and may be cited as the
California Taxpayer and Shareholder Protection Act of 2003.

10286.1. (a) The state may not enter into any contract with a
publicly traded foreign incorporated entity or its subsidiary if all
of the following apply:

(1) The United States is the principal market for the public
trading of the foreign incorporated entity.

(2) The foreign incorporated entity has no substantial business
activities in the place of incorporation as compared to the business
activity of its subsidiary or subsidiaries.

(3) The foreign entity was established in connection with a
transaction or series of related transactions pursuant to which (A)
the foreign entity acquired substantially all of the properties held
by a domestic corporation or partnership, and (B) immediately
after the acquisition more than 50 percent of the publicly traded
stock, by vote or value, of the entity is held by former shareholders
of the domestic corporation or by former partners of the domestic
partnership or related foreign partnership. For purposes of (B), any
stock sold in a public offering related to the transaction or a series
of transactions is disregarded.

~~(b) The chief executive officer of a state department or agency
or his or her designee may waive subdivision (a) when he or she
has made a written finding that the contract is necessary to meet
a compelling public interest. A “compelling public interest”
includes, but is not limited to, ensuring the provision of essential
services, ensuring the public health and safety, or an emergency as
defined in Section 1102.~~

~~(c) Each vendor submitting a bid or contract is required to
certify under penalty of perjury that it is not an ineligible vendor
as set forth in subdivision (a).~~

*(b) The chief executive officer of a state department or agency
or his or her designee may waive the prohibition specified in
subdivision (a) if either of the following apply:*

*(1) The state department or agency has made a written finding
that the contract is necessary to meet a compelling public interest.
For purposes of this paragraph, a “compelling public interest”
includes, but is not limited to, ensuring the provision of essential*

1 services, ensuring the public health and safety, or an emergency as
2 defined in Section 1102.

3 (2) The vendor certifies to the state department or agency that
4 it is not ineligible under subdivision (a) because the vendor, or its
5 parent business entity if it is a subsidiary, has reincorporated or
6 reorganized in a jurisdiction within the United States subsequent
7 to the incorporation in a foreign place of incorporation.

8 (c) Each vendor submitting a bid or contract to a state
9 department or agency shall also submit a declaration certifying
10 that it is not prohibited from contracting with the state pursuant to
11 subdivision (a). A vendor who declares as true any material matter
12 pursuant to this subdivision or subdivision (b) that he or she knows
13 to be false is guilty of a misdemeanor.

14 (d) This section does not apply to any contract between the state
15 and a vendor that is in effect on December 31, 2003, but an existing
16 contract that is renewed on or after January 1, 2004, is subject to
17 this section.

18 SEC. 3. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.